

## RBS and RUS, USDA

## § 4290.100

process to request a determination under this provision is outlined in paragraph (6)(ii) of this definition.

(i) The determination that an area is “rural in character” under this definition will apply to areas that are within:

(A) An urbanized area that has two points on its boundary that are at least 40 miles apart, which is not contiguous or adjacent to a city or town that has a population of greater than 150,000 inhabitants or the urbanized area of such a city or town; or

(B) An urbanized area contiguous and adjacent to a city or town of greater than 50,000 inhabitants that is within one-quarter mile of a rural area.

(ii) Units of local government may petition the Under Secretary of Rural Development for a “rural in character” designation by submitting a petition to both the appropriate Rural Development State Director and the Rural Business-Cooperative Service Administrator of USDA on behalf of the Under Secretary. The petition shall document how the area meets the requirements of paragraph (6)(i)(A) or (B) of this definition and discuss why the petitioner believes the area is “rural in character,” including, but not limited to, the area’s population density, demographics, and topography and how the local economy is tied to a rural economic base. Upon receiving a petition, the Under Secretary will consult with the applicable Governor or leader in a similar position and request comments to be submitted within 5 business days, unless such comments were submitted with the petition. The Under Secretary will release to the public a notice of a petition filed by a unit of local government not later than 30 days after receipt of the petition by way of publication in a local newspaper and posting on the Agency’s Web site, and the Under Secretary will make a determination not less than 15 days, but no more than 60 days, after the release of the notice. Upon a negative determination, the Under Secretary will provide to the petitioner an opportunity to appeal a determination to the Under Secretary, and the petitioner will have 10 business days to appeal the determination and provide further information for consideration.

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*Secretary* means the Secretary of Agriculture or his or her designee.

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*State* means each of the 50 states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the U.S. Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Is-

lands, and the Federated States of Micronesia.

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*Undistributed Net Realized Earnings* means Undistributed Realized Earnings less Non-cash Gains/Income, each as reported on SBA Form 468 or other USDA-approved form(s).

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## Subpart C—Qualifications for the RBIC Program

### ORGANIZING A RBIC

#### § 4290.100 Business form.

(a) *Newly-formed for-profit.* An Applicant for a RBIC license must be a newly formed for-profit entity or, subject to § 4290.150, a newly formed for-profit subsidiary of an existing entity. It must be organized under the law of a State. An Applicant may be organized as a corporation (“Corporate RBIC”), a limited partnership (“Partnership RBIC”), or a limited liability company (“LLC RBIC”).

(b) *Purpose.* An Applicant must be organized solely for the purpose of performing the functions and conducting the activities contemplated under the Act: making Developmental Venture Capital investments and providing Operational Assistance to eligible Smaller Enterprises.

(c) *Articles.* The RBIC’s Articles—

(1) Must specify in general terms:

(i) The purposes for which the RBIC is formed;

(ii) The name of the RBIC;

(iii) The Rural Area or Areas in which it will operate;

(iv) The place where the RBIC’s headquarters will be located; and

(v) The amount and classes of the RBIC’s ownership interests.

(2) May contain any other provisions consistent with the Act that the RBIC may determine is appropriate to adopt to regulate its business and the conduct of its affairs.

(3) Are subject to the Secretary’s approval.

(d) *Duration*—(1) *Partnership RBICs.* If you are a Partnership RBIC:

(i) You must have a minimum duration of 10 years, or two years following

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the maturity of your last-maturing Leverage security, whichever is longer. After 10 years, if all Leverage has been repaid or redeemed and all amounts due the Secretary, his or her agent, or Trustee have been paid, the Partnership RBIC may be terminated by a vote of your partners;

(ii) None of your general partner(s) may be removed or replaced by your limited partners without prior written approval of the Secretary;

(iii) Any transferee of, or successor in interest to, your general partner shall have only the rights and liabilities of a limited partner prior to the Secretary's written approval of such transfer or succession; and

(iv) You must incorporate all the provisions in this paragraph (d) in your limited partnership agreement.

(2) *LLC RBICs*. If you are a LLC RBIC, you must have a minimum duration of 10 years, or two years following the maturity of your last-maturing Leverage security, whichever is longer. After 10 years, if all Leverage has been repaid or redeemed and all amounts due the Secretary, his or her agent, or Trustee have been paid, the LLC RBIC may be terminated by a vote of your members.

(3) *Corporate RBICs*. If you are a Corporate RBIC, you must have a duration of not less than 30 years unless earlier dissolved by the shareholders, except that the Corporate RBIC must not dissolve until at least two years following the maturity of your last-maturing Leverage security.

### § 4290.110 Qualified management.

An Applicant must show, to the satisfaction of the Secretary, that its current or proposed management team is qualified and has the knowledge, experience, and capability in Community Development Finance or Relevant Venture Capital Finance, necessary for investing in the types of Enterprises contemplated by the Act, regulations in this part, and its business plan. In determining whether an Applicant's current or proposed management team has sufficient qualifications, the Secretary will consider information provided by the Applicant and third parties concerning the background, capability, education, training and reputation of

its general partners, managers, officers, key personnel, and investment committee and governing board members. The Applicant must designate at least one individual as the official responsible for contact with the Secretary.

EFFECTIVE DATE NOTE: At 76 FR 80222, Dec. 23, 2011, § 4290.110 was revised, effective Jan. 23, 2012. For the convenience of the user, the revised text is set forth as follows:

### § 4290.110 Qualified management.

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### § 4290.120 Plan to invest in Rural Areas.

An Applicant must agree that if licensed as a RBIC, it will make Developmental Venture Capital investments in Enterprises that will create wealth and job opportunities in Rural Areas and among individuals living in those areas.

### § 4290.130 Identified Rural Areas.

A RBIC must identify the specific Rural Area or Areas in which it intends to make Developmental Venture Capital investments and provide Operational Assistance under the RBIC program. The scope of the identified areas must be consistent with Applicant's business plan, especially as the plan relates to the Applicant's ability to operate actively, soundly, and profitably in such areas.